



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 22, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0098

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|--|------------------------------|
| # 1 | 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional | Not Sustained - Inconclusive |
| # 2 | 8.300 - Use of Force Tools 4. Officers May Use TASERs in the Following Circumstances | Not Sustained - Inconclusive |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee (NE) TASED Community Member #1 (CM#1) without justification.

ADMINISTRATIVE NOTE:

On May 16, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

On February 23, 2023, around 6:25 AM, NE, and other officers responded to a burglary at a movie theater. The 9-1-1 caller reported seeing an unknown subject inside the location without authorization. The caller described a slim Black man wearing a baseball cap, dark hoodie, light pants, dark sneakers, and black latex gloves, looking under counters, possibly for money. The caller noted that movie theater security tracked the subject with surveillance cameras, and he was last seen in a northeast stairwell. Officers searched the building and heard the subject exit at the northeast stairwell door. A computer-aided dispatch (CAD) update indicated that once the subject—later identified as CM#1—breached the door, he was TASED and quickly apprehended. Crowbars and other tools were recovered near CM#1. The Complainant—an SPD lieutenant—submitted the OPA complaint. OPA opened an investigation, reviewing the complaint, incident report, computer-aided dispatch report, and NE's TASER and training records.

NE, the officer who TASED CM, provided a use of force statement. In it, NE said he was positioned outside the movie theater's northeast exit for containment purposes. He was also designated the less lethal force/TASER officer among the contact team. NE said the contact made several announcements throughout the theater that officers were present and searching the location, giving the subject ample opportunity to surrender. NE wrote that as he stood outside the northeast door, he heard someone trying to open the door. He said that about twenty minutes later, someone tried to open that door again, causing Witness Employee #1 (WE#1) to announce "police" several times loudly. NE said that



CM#1 exited through the door within four seconds. NE wrote that CM#1's sudden exit startled NE, causing NE to deploy his TASER accidentally. One of the TASER's probes hit CM#1's right bicep, and another struck the bag CM#1 carried. NE explained that his TASER was aimed at the door since they were unaware whether the subject posed a threat. NE also noted that CM#1 exited toward the officers, and his abrupt exit, coupled with below-freezing temperature, led to NE's unintended deployment. NE's chain of command review resulted in TASER re-training.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional

It was alleged that NE's TASER deployment was unprofessional.

For the reasons as Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

8.300 - Use of Force Tools POL-2. 4. Officers May Use TASERs in the Following Circumstances

It was alleged that NE's TASER deployment was unjustified.

Officers may use TASERs when a subject causes an immediate threat of harm or when public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to injure an officer or the subject and hands-on tactics or other force options are likely to cause greater injury. SPD Policy 8.300-POL-2(4).

Here, although CM#1 was found to possess a crowbar and other tools and demonstrated resistance by attempting to escape, there was no evidence that he posed a threat to himself or the officers. Moreover, despite NE's insistence that he unintentionally deployed his TASER, NE's intent is not an element that must be established to find that NE violated policy. Nevertheless, OPA acknowledges several reportedly accidental TASER X2 deployments. In response, OPA recently issued a Management Action Recommendation (2023COMP-0004) suggesting remedial actions until the TASER 10 is distributed.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**